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MEMO ENDORSED

Via ECF

Hon. Jessica G.L. Clarke, U.S.D.J.
United States District Court for the
Southern District of New York
500 Pearl Street, Room 1040
New York, New York 10007

Re: *The Doe Fund, Inc. v. Berkley Insurance Company*
SDNY Civil Action No. 1:22-cv-09852-JGLC
Our File No. B0015-00066

Dear Judge Clarke:

This letter is respectfully submitted jointly on behalf of Defendant Berkley Insurance Company (“Berkley”) and Plaintiff The Doe Fund, Inc. (“Doe Fund”) pursuant to Sections 2(a) and (e) of Your Honor’s Individual Rules and Practices to request a stay of discovery pending decision on the filed summary judgment motions and/or an extension of the existing discovery deadlines in view of the lengthy period of time between when the Proposed Case Management Scheduling Order was filed and when the Initial Conference in this matter was ultimately held.

As the parties advised in their August 14, 2023 joint letter (ECF Doc. No. 48), Doe Fund, with the Court’s approval, filed a Motion for Partial Summary Judgment on June 30, 2023 seeking a declaration regarding Berkley’s duty to defend Doe Fund in the underlying lawsuits. Berkley filed an Opposition to Doe Fund’s Motion along with a Cross-Motion for Summary Judgment on August 11, 2023. Doe Fund’s Reply and Opposition to Berkley’s Cross-Motion are to be submitted by September 8, 2023, and Berkley’s Reply papers in support of its Cross-Motion for Summary Judgment are to be submitted by September 22, 2023.

While this Summary Judgment briefing was taking place, the parties have pursued written discovery in this matter. In that regard, the parties served their Initial Disclosures on June 16, 2023 and their Interrogatories and Requests for Production on June 26, 2023. Further, responses to the Interrogatories and Document Requests were served on August 17, 2023 and the documents identified in these discovery responses are to be produced pursuant by the end of this week.

The parties' proposed revised Discovery Schedule is GRANTED. The Court denies the parties' request for a stay. The parties are hereby ORDERED to appear for a post-discovery conference with the Court on January 12, 2024 at 11:00 a.m. The conference will be held remotely via Microsoft Teams.

Dated: August 24, 2023
New York, New York

August 21, 2023

SO ORDERED.

A handwritten signature in blue ink that reads 'Jessica Clarke'.

JESSICA G. L. CLARKE
United States District Judge



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The initial Case Management Scheduling Order set the following deadlines:

- 08/31/23 Deadline for Fact Discovery completion, Depositions and Requests for Admission;
- 09/28/23 Deadline for Expert Disclosures (simultaneous);
- 10/31/23 Deadline to complete Expert Discovery;
- 11/01/23 Deadline to submit Joint Status Letter;
- 11/08/23 Post-Discovery Court Conference.

If a stay of discovery pending decisions on the filed Motions for Summary Judgment is not provided by this Court, the parties request the following revised Discovery Schedule:

- 10/31/23 Deadline for Fact Discovery completion; Depositions and Requests for Admission;
- 11/28/23 Deadline for Expert Disclosures (simultaneous);
- 12/31/23 Deadline to complete Expert Discovery;
- 01/05/24 Deadline to submit Joint Status Letter;
- 01/12/24 Post-Discovery Court Conference.

The parties submitted the above-referenced initial Case Management Scheduling Order one-week prior to the Initial Pretrial Conference in this matter that was scheduled on April 14, 2023. However, during that initial conference, Judge Mary Kay Vyskocil made a couple of disclosures for the record, advising that she had spent a significant portion of her professional career at Simpson Thatcher during which she did a significant amount of insurance coverage work including working with counsel for Berkley in some of these matters, and that she knew several attorneys from the Anderson Kill firm who were both her adversaries and friends. Judge Vyskocil further noticed her familiarity with Doe Fund and the work that it does and stated she had made in the past monetary contributions to Doe Fund. Thus, instead of conducting the initial conference, the Court requested that Doe Fund and Berkley file letters by April 21, 2023, setting forth their responses to her disclosures and noticing any objections they might have. The parties responded by advising the Court that they had no objections and were willing to proceed in this matter before Judge Vyskocil. The Court then scheduled the Initial Pretrial Conference for June 2, 2023.

In advance of this conference, the parties advised the Court that they had agreed to the above-referenced stipulated Motion for Summary Judgment Briefing Schedule and requested that the Court stay discovery for the duration of the Summary Judgment Briefing. The Initial Conference was not conducted on June 2, 2023 because Judge Vyskocil was not feeling well that



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day. Instead, the Judge's Secretary told us that the Judge would be entering an Order signing off on the prior submitted Case Management Plan and the proposed Summary Judgment Motion Briefing Schedule, but that the Judge would not stay discovery while the Summary Judgment briefing goes forward. We received a copy of this Order later that day.

On June 6, 2023, the parties filed a joint letter requesting the Court enter a revised Civil Case Management Plain and Scheduling Order to account proportionally for the period that had elapsed since the initial proposed Order was filed and when it was ultimately agreed to by the Court. On June 7, 2023, we received a Memo Endorsement Order which denied this request and scheduled a status conference on August 8, 2023, which was later rescheduled to August 9, 2023.

Upon this case being reassigned to Your Honor, the August 9, 2023 Status Conference was taken off the calendar and the parties were directed to submit a joint letter updating the Court on the status of the case, which was filed on August 14, 2023 (ECF No. 48). The parties are requesting this two-month extension of the discovery deadlines because their document productions will not be completed until the end of this week, Doe Fund has noticed the depositions of four Berkley witnesses, and Berkley intends to notice the depositions of individuals disclosed in Doe Fund's recent served Interrogatory Responses. The parties thus submit, that if a stay of discovery is not granted, the existing schedule does not allow for sufficient time to complete fact and expert discovery (if any).

The parties jointly request a remote status conference at the Court's earliest convenience to discuss the above requests. There are no appearances currently scheduled before Your Honor.

We thank the Court for its courtesies and consideration.

Respectfully submitted,

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